

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Request for
Fair Hearing of:

DEVON A.,

Claimant,

v.

FAR NORTHERN REGIONAL CENTER,

Service Agency.

OAH No. N 2005100511

DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California heard this matter in Chico, California on May 16, 2006.

Larry Withers, Case Management Supervisor, represented the Far Northern Regional Center.

There was no appearance by Devon A. or by anyone representing him.

The record was closed and the matter was submitted on May 16, 2006.

ISSUES

The issue is whether Devon A. is eligible for Regional Center supports and services.

FACTUAL FINDINGS

1. On a date not established in late 2005, Devon A.'s mother applied to the Regional Center for supports and services for Devon. The Regional Center assessed Devon and later denied the application in writing. Devon's mother filed a Request for Fair Hearing on October 13, 2005. She requested an informal meeting and mediation. Waivers

of time for the commencement of the evidentiary hearing were made to permit the pre-hearing efforts to resolve the matter. When these failed, the matter was confirmed for evidentiary hearing.

2. Notice of the date, time and place of the evidentiary hearing was duly given by the Office of Administrative Hearings to Devon's mother as Devon's authorized representative. Devon's mother confirmed to Mr. Withers that she had received the Notice of Hearing and was aware of the hearing date. On the morning of the evidentiary hearing, Devon's mother was contacted and confirmed to the Regional Center that she did not intend to appear at the hearing. Devon's mother did not appear, and no one representing Devon appeared. Good cause does not exist for Devon's authorized representative's failure to appear at the evidentiary hearing.

LEGAL CONCLUSIONS

1. "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." "As in ordinary civil actions, the party asserting the affirmative in an administrative hearing has the burden of proof going forward and the burden of persuasion by a preponderance of the evidence."¹ The burden of proof here is upon Devon and his authorized representative to prove that he is eligible of regional Center supports and services.

2. Devon's mother's failure to appear and pursue the Request for a Fair Hearing constitutes abandonment of the Request. The Request for Fair Hearing must be dismissed for failure to diligently prosecute it, without prejudice to refilling it at some future date if circumstances warrant.

ORDER

The claim of Devon P. for Far Northern Regional Center supports and services is DENIED for failure to prosecute. The Regional Center's denial of claimant's request for services is AFFIRMED.

¹ *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051.

NOTICE

This is the final administrative Decision. Both parties are bound by this Decision; however, either party may appeal this Decision to a court of competent jurisdiction within 90 days.

DATED: _____

STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings